



DEPARTMENT OF DEFENSE
Defense Contract Management Agency

INSTRUCTION

Boards of Review

Contracts Directorate
OPR: DCMA-AQ

DCMA-INST 134
October 15, 2012
Change 2, Effective April 13, 2017

SUMMARY OF CHANGES. *References to Operations Directorate have been removed to reflect current organizational structure. The Instruction is UNLIMITED and approved for public release.*

1. PURPOSE. This Instruction:

- a. Updates the Agency policy for DCMA-INST 134, “Boards of Review” (Reference (a)).
- b. Is established in compliance with DoD Directive 5105.64 (Reference (b)).
- c. Implements DoD policy pursuant to references on pages 3 and 4.
- d. Establishes policies and assigns responsibility for ensuring that in certain instances, prescribed herein, the decision processes of Administrative Contracting Officer (ACO) are reviewed at an appropriate level Board of Review (BoR).

2. APPLICABILITY. This Instruction applies to all DCMA activities unless higher-level regulations, policy, guidance, or agreements take precedence.

3. MANAGERS’ INTERNAL CONTROL PROGRAM. This Instruction contains internal management control provisions that are subject to evaluation and testing as required by DCMA-INST 710, Managers’ Internal Control Program (Reference (c)). The process flowchart is located at on the Resource Page.

4. RELEASABILITY – ~~RESTRICTED.~~ This Instruction is NOT for public release and is located on the DCMA Intranet Website. UNLIMITED. This Instruction is approved for public release.

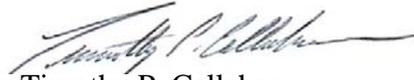
5. LABOR CODE(S). Located on the resource page.

6. RESOURCE PAGE. <https://360.dcma.mil/sites/policy/AQ/SitePages/134r.aspx>

October 15, 2012

Change 2, Effective April 13, 2017

7. EFFECTIVE DATE. By order of the Director, DCMA, *Change 2 of this* Instruction is effective ~~November 4, 2013~~, *upon issuance and all applicable activities shall be fully compliant within 60 days from this date.*



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Executive Director, Contracts

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REFERENCES

- (a) DCMA-INST 134, “Boards of Review”, October 15, 2012, *as amended*
- (b) DoD Directive 5105.64, “Defense Contract Management Agency (DCMA),” January 10, 2013
- (c) DCMA-INST 710, “Managers’ Internal Control Program,” April 21, 2014
- (d) CAS 412-50(b)(7), “CAS Pension Harmonization Rule”
- (e) DCMA Cost and Pricing Center Corporate/Divisional Administrative Contracting Officer Group Memorandum, “Supervisory/Peer Review Process for CACO/DACO Actions,” April 12, 2012 and Amendment dated June 11, 2013
- (f) DCMA-INST 934, “External Audits,” January 15, 2013
- (g) DCMA-INST 905, “Contract Claims and Disputes,” December 17, 2013
- (h) Defense Contract Audit Agency (DCAA) Memorandum PAS 730.4.A.4 (10-PAS-015(R)), “Guidance on Resolving Contract Audit Recommendations,” May 27, 2010
- (i) DFARS PGI 215.406-1(b), “Prenegotiation objectives”
- (j) DCMA-INST 809, “Records Management,” May 2011
- (k) DoD Manual 5200.01-V4, “DoD Information Security Program: Protection of Unclassified Information (CIU),” February 24, 2012
- (l) The Freedom of Information Act, 5 U.S.C. § 552, as amended by Public Law No. 104-231, 110 Stat. 3048
- (m) Federal Acquisition Regulation (FAR) 31.109, “Advance Agreements”
- (n) FAR Subpart 31.2, “Contracts With Commercial Organizations”
- (o) FAR Subpart 31.3, “Contracts With Educational Institutions”
- (p) FAR Subpart 31.6, “Contracts with State, Local, and Federally Recognized Indian Tribal Governments”
- (q) FAR Subpart 31.7, “Contracts with Nonprofit Organizations”
- (r) FAR 31.201-6(c), “Accounting for Unallowable Costs”
- (s) FAR 31.109(h), “Advance Agreements”
- (t) DCMA-INST 131, “Contractor Business Systems,” November 6, 2013, as amended
- (u) FAR 30.605, “Processing Noncompliances”
- (v) DCMA-INST 108, “Cost Accounting Standards (CAS) Administration,” April 3, 2013
- (w) Defense Procedure and Acquisition Policy (DPAP), “Contract Pricing and Finance Guide,” Volume 4, Chapter 6
- (x) FAR 30.603-1(d), “Required Changes”
- (y) FAR 52.230-2, “Cost Accounting Standards,” May 2012
- (z) FAR 52.230-3, “Disclosure and Consistency of Cost Accounting Practices,” May 2012
- (aa) FAR 52.230-5 “Cost Accounting Standards – Educational Institution,” May 2012
- (ab) FAR 52.230-2(a)(4)(iii), “Cost Accounting Standards,” May 2012
- (ac) FAR 52.230-3 (a)(3)(ii), “Disclosure and Consistency of Cost Accounting Practices,” May 2012
- (ad) FAR 52.230-5 (a)(4)(iii), “Cost Accounting Standards – Educational Institution,” May 2012
- (ae) Defense Federal Acquisition Regulation Supplement (DFARS) 231.205-70, “External Restructuring Costs”

- (af) DFARS PGI 231.205-70(d), "External restructuring costs"
- (ag) DCMA-INST 128, "Disallowance of Costs," December 4, 2013
- (ah) DFARS 242.803(b)(i), "Disallowing costs after incurrence"
- (ai) DCMA-INST 116, "Performance Based Payments," August 18, 2014
- (aj) FAR 2.101, "Definitions"
- (ak) FAR Subpart 32.10, "Performance Based Payments," June 2010
- (al) FAR 32.1003(a), "Criteria for Use"
- (am) FAR 32.503-6, "Suspension or Reduction of Payments"
- (an) FAR 32.1008, "Suspension or Reduction of Performance-Based Payments"
- (ao) DCMA-INST 101, "Termination for Convenience," October 10, 2014
- (ap) DCMA Guidebook, "Termination for Convenience Guidebook," September 19, 2012

CHAPTER 1

POLICY

1.1. POLICY. It is DCMA policy that:

1.1.1. The ACO shall obtain appropriate management review of contracting actions before negotiating or taking any action to settle an issue. A BoR is another level of management review although only advisory in nature. Certain contracting actions identified within this policy are subject to review by an applicable BoR within 15 business days after receipt of the review documentation and all supplemental information requested by the Board. The term ACO as used in this Instruction can refer to Corporate Administrative Contracting Officer (CACO), Divisional Administrative Contracting Officer (DACO), Termination Contracting Officer (TCO), or ACO unless otherwise specified. The term BoR refers to the process and is used in the singular. The term Board refers to the personnel on the BoR.

CHAPTER 2

RESPONSIBILITIES

2.1. HEADQUARTERS (HQ) EXECUTIVE DIRECTOR OF CONTRACTS. The HQ Executive Director of Contracts shall:

2.1.1. Ensure compliance with this Instruction by subordinate contracting staff.

2.1.2. Function as a chairperson of the HQ Board identified in this Instruction.

2.1.3. As the chairperson of an HQ Board be responsible to:

2.1.3.1. Delegate the chairperson duties to lower levels as needed.

2.1.3.2. Determine the composition of the HQ Board.

2.1.3.3. Make determinations to grant applicable waivers of the requirement to have a matter reviewed by the HQ Board.

2.1.3.4. Establish response times when requesting supplemental information for an HQ Board.

2.1.3.5. Elevate a contract action to the DCMA Director (or his designee) for review and approval if the Defense Contract Audit Agency (DCAA) does not agree with the HQ Board's recommendation. (The DCMA and DCAA Directors will resolve the disagreement.)

2.1.3.6. Ensure a record is retained for each contracting action reviewed.

2.2. ~~DIRECTORATE~~ REGION COMMANDER/DIRECTOR, DIRECTOR OF CORPORATE/ DIVISIONAL ADMINISTRATIVE CONTRACTING OFFICER GROUP, OR DIRECTOR OF THE TERMINATION CENTER. The appropriate Commander or Director shall:

2.2.1. Ensure compliance with this Instruction by subordinate contracting staff.

2.2.2. Function as a chairperson of an appropriate Board covered under this Instruction.

2.2.3. As the chairperson of a Board be responsible to:

2.2.3.1. Delegate the chairperson duties to lower levels as needed.

2.2.3.2. Determine the composition of the appropriate Board.

2.2.3.3. Make determinations to grant applicable waivers of the requirement to have a matter reviewed by the applicable Board.

2.2.3.4. Establish response times when requesting supplemental information for a Board.

2.2.3.5. Elevate a contract action to an HQ Board if DCAA does not agree with the Directorate Board's recommendation.

2.2.3.6. Ensure a record is retained for each contracting action reviewed.

2.3. ADMINISTRATIVE CONTRACTING OFFICERS. An ACO shall:

2.3.1. Comply with all applicable guidance in this Instruction.

2.3.2. Not take any action to settle or disposition any contract action while it is under review or investigation by another Government authority including the DoD Inspector General (DoD IG) or the Government Accountability Office (GAO).

CHAPTER 3

PROCEDURES

3.1. IDENTIFY CONTRACT ACTIONS REQUIRING BOARDS OF REVIEW. ACOs shall determine if a contract action requires a BoR by referring to the BoR Matrix Chart found on the Resource Page of this Instruction. The chart identifies the applicable BoR level based on the criteria of contract action type and in some instances based on dollar value.

3.1.1. The appropriate level for a BoR is often based on the dollar threshold of the contract action identified in the BoR Matrix Chart. The dollar impact of a contract action may be developed by a contractor, a DCAA auditor, a ~~technical~~ *functional* specialist, a cost and price analyst, and/or an ACO. Use the highest developed dollar amount (no matter which party developed the figure) as the baseline for comparing to the dollar thresholds in the BoR Matrix Chart. Further, the dollar amount (absolute value amount) of the contract action shall be computed by adding together the amount of each cost increase and the amount of each cost decrease associated with that contract action. For example, a contract action involving a \$10,000 cost increase component and a \$10,000 cost decrease component would result in an absolute dollar value impact of \$20,000 to compare to a dollar threshold

3.1.2. While the noted Matrix Chart identifies mandatory BoR requirements, ACOs are encouraged to request a BoR for any high risk, controversial, or precedent-setting contracting action, regardless of transaction type or dollar value. If legal counsel, in consultation with the Contract Disputes Resolution Center (CDRC), believes an ACO position taken in a particular matter may impact other pending or potential DCMA legal cases, the position should be brought before an HQ level Board. If an ACO position can affect other government agencies, such matter should be brought before an HQ level Board. Of special concern are contracting actions that may establish a legal precedent as identified by legal counsel based on consultation with the Contract Law Group Steering Committee and CDRC.

3.1.3. For contracting actions below the Board thresholds identified in the BoR Matrix Chart, the ~~Contract Management Offices (CMO)~~ Region or Center retain responsibility for appropriate review.

3.1.34. HQ-level Boards include the following combined or delegated Board arrangements:

~~3.1.34.1. Operations or International Directorate. Any Operations or International Directorate contracting action that requires an HQ Board (by action and threshold) will be boarded at the HQ level in a combined BoR with Operations/International Directorate Contracts Director/staff on the Board. Any Eastern/Central/Western Region or International Region contract action that requires an HQ Board (by action and dollar threshold) will be boarded at the HQ level in a combined BoR with Eastern/Central/Western Region or International Region Contracts Director/staff on the BoR panel. All other Regions/Centers require that a contracting action subject to a HQ-level Board must first be boarded at the Region/Center level.~~

3.1.34.2. Special Programs *Directorate Region*. The Special Programs *Directorate Region* shall hold a separate BoR for all applicable contract actions that require a Board. If a contract action involves the CACO/DACO network, the ACO and Special Programs Board shall consult with the Director of the CACO/DACO group (or designee) before reaching a final Board recommendation on the contract action. If the contract action meets the threshold to require an HQ level Board, the ACO and Special Programs Board shall consult with the Executive Director, Contracts (or designee) before reaching a final Board recommendation on the contract action.

3.1.34.3. CACO/DACO Group. The CACO/DACO group shall hold a BoR for all applicable Forward Pricing Rates Recommendations (FPRR), Forward Pricing Rates Agreements (FPRA), and contract actions involving the CAS Pension Harmonization Rule (Reference (d)).

~~3.1.4. For contracting actions below the Board thresholds identified in the BoR Matrix Chart, the Contract Management Offices (CMO) or Center retain responsibility for appropriate review.~~

3.1.5. CACO/DACO Group and Special Programs *Directorate Region*. The Supervisory/Peer Review process is established to approve all Pre-negotiation Objective Memorandums (PNOM), Price Negotiation Memorandums (PNM) and other appropriate documentation for actions that do not meet the criteria of an HQ BoR.

3.1.5.1. CACO/DACO Group. In accordance with the guidance memo "SUBJECT: Supervisory/Peer Review Process for CACO/DACO Actions" (Reference (d)), CACOs/DACOs shall submit their PNOM/ PNM or other appropriate documentation through a Supervisory/Peer Review process. The memo is provided on the Resource page of this Instruction. The review process is as follows:

3.1.5.1.1. CACO and GS-1102-15 Team Supervisors shall review, approve, or determine a need for a higher level review of the following contract actions (see BoR Matrix Chart at "Directorate Level"):

3.1.5.1.1.1. Advance Agreement.

3.1.5.1.1.2. Business System Reviews.

3.1.5.1.1.3. CAS noncompliance.

3.1.5.1.1.4. Changes to Cost Accounting Practices.

3.1.5.1.1.5. Equitable Adjustments.

3.1.5.1.1.6. FPRR and FPRA Pre-negotiation Objectives.

3.1.5.1.1.7. Final Overheads Rates.

3.1.5.1.1.8. Notice of Intent to Disallow Costs (including DCAA Form 1).

3.1.5.1.2 Only GS-1102-15 Supervisory Team Leader review is required of CACO/DACO PNOMs for contract actions in litigation or Alternative Dispute Resolution (ADR) procedures.

3.1.5.1.3. If a BoR action is required, documents shall be posted in a local drive as described in the guidance memo (Reference (e)), as found on the Resource Page.

3.1.5.1.4. At the completion of negotiations, the CACO/DACO shall submit their PNM to the Team Supervisor for final approval. After Team Supervisor approval, if the action requires higher level review, the CACO/DACO will submit the PNM package for a PNM approval BoR.

3.1.5.1.5. For all actions not subject to an HQ BoR, the Director of the CACO/DACO group has delegated these actions to the GS-1102-15 Team Supervisors.

3.1.5.1.6. For actions that are subject to the HQ BoR, the Director of the CACO/DACO group will be the final PNM approval authority.

3.1.5.2 Special Programs ~~Directorate~~ *Region*. The supervisory review process is as follows:

3.1.5.2.1 All PNOMs and PNMs should be reviewed/approved by the Supervisor. Supervisor review is required of PNOMs for contract actions in litigation and/or ADR.

3.1.5.2.2 Supervisors shall review, approve, or determine a need for a higher level review of the contract actions on the BoR Matrix Chart at "Directorate Level".

3.1.5.2.3 At the completion of negotiations, the DACO shall submit their PNM to the Team Supervisor for final approval. After Team Supervisor approval, if the action requires higher level review, the DACO will submit the PNM package for a PNM approval BoR.

3.1.5.2.4 For all actions not subject to an HQ BoR, the Special Programs Pricing Director has delegated these actions to the DACO Team Supervisors.

3.1.5.2.5 For actions that are subject to an HQ BoR, the Special Programs Pricing Director will be the final PNM approval authority.

3.1.5.2.6 If a contract action involves the CACO/DACO network, the ACO shall consult with the CACO/DACO Group before reaching a final recommendation.

3.1.6. ACOs shall not take any action to settle or disposition any contract action if the matter is under review or investigation (until after such review/investigation is completed) by another Government authority such as DoD IG or the GAO.

3.1.6.1. The ACO needs to consult with assigned legal counsel when a contract action under review or investigation involves statute of limitations implications.

3.1.6.2. The ACO shall also consider guidance found in DCMA-INST *934*, "External Audits" (Reference (f)) as it may pertain to the matters under review or investigation.

3.1.7. ACO shall consult legal counsel and DCMA-INST *905*, "Contracts Claims and Disputes" (Reference (g)) for guidance related to:

3.1.7.1. Matters under the jurisdiction of another Federal agency. ACOs shall not take any action to settle or disposition any contract action if the matter involves penalties or forfeitures prescribed by statute or regulation that another Federal agency is specifically authorized to administer, settle, or determine.

3.1.7.2. Disputable contract matters.

3.1.7.3. Matters involving fraud.

3.1.7.4. Matters that can negatively affect existing disputes or appeals under the cognizance of:

3.1.7.4.1. DCMA.

3.1.7.4.2. Other agencies or service under DoD.

3.1.7.4.3. Department of Justice.

3.2. REQUEST A BOARD AND SUBMIT DOCUMENTATION.

3.2.1. The ACO shall e-mail requests for a BoR through appropriate channels to the applicable Board. Depending on the Board level, follow applicable guidance concerning submitting BoR documents (e.g., documents to be posted/filed in a DCMA site portal). See the Resource Page for detailed guidance on supplying electronic and/or paper documents to a given type of BoR. All "For Official Use Only" documents should be marked in a manner consistent with guidance found at paragraph 3.7.5 of this Instruction.

3.2.1.1. The request form is found in a link "BoR Request Form" on the Resource Page.

3.2.1.2. The review initiator shall provide documentation sufficient to:

- 3.2.1.2.1. Present the facts.
- 3.2.1.2.2. Explain any variations from the position of auditors/advisors (if applicable).
- 3.2.1.2.3. Support the proposed negotiation positions.
- 3.2.1.3. At a minimum, the documents to be presented to a Board shall contain:
 - 3.2.1.3.1. A Table of Contents or Index.
 - 3.2.1.3.2. BoR Request Form.
 - 3.2.1.3.3. Executive Summary.
 - 3.2.1.3.4. Draft PNO/PNM, draft final determination letter, or other draft action document.
 - 3.2.1.3.5. DCAA audit report and reports of technical specialists, if applicable.
 - 3.2.1.3.6. Applicable legal opinions, technical specialist reports, price analyst reports.
 - 3.2.1.3.7. Contractor submission or proposal.
- 3.2.1.4. The subject matter of the BoR can impact the types of documents to supply a Board. A listing of various BoR types and any required supporting documents (to include document organization) are covered in guidance documents on the Resource Page. These guidance documents must be consulted to ensure consistency and uniformity for presenting materials for the subject matter before the BoR.
 - 3.2.1.4.1. In no case will legal opinions or other materials identified as being “privileged,” be provided to persons other than DCMA personnel involved in reviewing the contract action that DCMA will take, without advance approval of DCMA Office of General Counsel.
 - 3.2.1.5. In circumstances where a regulatory, contractual, or statute of limitations time deadline is imminent, the ACO shall explain such and request an expedited review before a BoR.
- 3.2.2. A BoR shall not be scheduled until such time as the review initiator (requestor) has provided all documents needed for consideration by the Board.

3.3. IMPANEL A BOARD.

- 3.3.1. Board Composition and Other Advisors.

3.3.1.1. Applicable Boards will be chaired by the Executive Director, Contracts; ~~Directorate~~ *Region* Contracts Director; Center Director; or a designee.

3.3.1.2. Member composition of a Board is determined by the chairperson but should consist of senior personnel. Members should be well qualified by virtue of their training, knowledge, position, and experience. In selecting Board members, the chairperson will consider the type of contracting action to be reviewed and the experience and qualifications of the individual members relative to that type of action.

3.3.1.3. Board advisors should include:

3.3.1.3.1. Members from the Office of General Counsel (required attendance).

3.3.1.3.2. Appropriate DCAA auditors (if ACO used/will use DCAA input for the contracting action).

3.3.1.3.3. Appropriate subject matter specialists, such as pension experts, insurance experts or engineers.

3.3.1.4. Peers in the contracting career field should participate in Board proceedings to the maximum extent possible.

3.3.1.5. A performance advocate will be assigned (as tasked by applicable organization management or Board chairperson) to handle logistical and/or pre-brief matters in preparation for an applicable BoR.

3.3.2. The Board is expected to meet, review the contract action, and forward written recommendations (typically by BoR minutes) to the review initiator within 15 business days after receipt of the review documentation or within 15 business days after receipt of supplemental information requested by the Board.

3.3.3. In contracting actions where an ACO provides to the Board a target negotiation position for contract pricing matters, the Board chairperson shall establish a range of deviation that will not require a follow-up explanation to the Board chairperson. If the ACO exceeds the deviation range during negotiations, but before final execution of the contract action, the ACO shall follow guidance found below in paragraph 3.5.

3.3.4. The Board chairperson will establish an appropriate response time when requesting supplemental information.

3.4. REQUEST A WAIVER TO A BOARD AND SUBMIT DOCUMENTATION.

3.4.1. The ACO shall e-mail requests for a waiver of a BoR through appropriate channels to the applicable Board chairperson.

3.4.2. Waivers of a Board review will be requested from the chairperson in circumstances where:

3.4.2.1. The contract action involves audit or functional specialist findings fully sustained by the ACO and/or similar contracting actions/issues with the same contractor *which* were brought before the Board within the previous 12 months.

3.4.2.2. Regulatory, statutory, or contractual deadlines do not allow time to convene a Board. Along with the request for a waiver, the ACO (waiver requestor) shall submit supporting documentation in accordance with guidance found in paragraph 3.2.1.2. of this Instruction.

3.4.3. The “BoR Waiver Request Form” is available at the “Waiver to BoR Request Form” link on the Resource Page.

3.4.4. The applicable Board chairperson shall grant or deny the waiver request.

3.4.5. The applicable performance advocate shall retain a record of the approved waiver request in a manner consistent with guidance found in paragraph 3.7 of this Instruction.

3.5. POST-BOARD DEVIATIONS.

3.5.1. Where a Board has recommended a certain future contract action, negotiation position or position to take no contract action, yet the ACO intends to deviate from the Board's advisory position or exceed a Board's previously recommended deviation range to a negotiation position as covered in paragraph 3.3.3, ACO shall provide written justification of the ACO's position to the Board chairperson prior to commencing negotiations, taking such contract action or deciding not to take a contract action which was previously recommended by the Board. The ACO will obtain review by the ~~EMO~~ *Region* Director or other applicable Director prior to submitting such justification to the Board chairperson. If the ACO's intended action/inaction is at variance with a DCAA position, the Board Chairperson shall notify the DCAA representative IAW paragraph 3.6.1.

3.5.1.1. When the deviation involves a contract action covered by a Special Programs Board, and the contract action involves the CACO/DACO network, the ACO and Special Programs Board shall consult with the Director of the CACO/DACO group (or designee) before reaching a final resolution about the deviation.

3.5.1.2. When the contract action meets the threshold to require an HQ level Board, the ACO and Special Programs Board shall consult with the Executive Director, Contracts (or his/her designee) before reaching a final resolution of the deviation.

3.5.2. If the Board chairperson disagrees with the deviation, a resolution shall be discussed among the ACO, the Board chairperson, and all applicable levels of management identified in prior paragraphs 3.5.1, 3.5.1.1, or 3.5.1.2 before final execution of the contract action. In any event, an ACO retains the right to reject the chairperson's advisory recommendation. Every contract action must be the result of the ACO's personal and independent decision.

3.6. RESOLVE DCAA/DCMA DISAGREEMENTS.

3.6.1. The Board chairperson (at any level) shall inform the appropriate DCAA representative (in attendance at the Board hearing) that DCAA is expected to notify both the chairperson and the ACO of any disagreement DCAA may have with an ACO's intended course of action, relative to the subject matter of the BoR. Consistent with References (h) and (i), the chairperson shall inform the DCAA representative that DCAA must provide notice to the Board Chairperson of any DCAA disagreement with the proposed DCMA position within three business days of receiving notice of the ACO's intended course of action.

3.6.2. The subsequent issued minutes (draft or final versions) of the BoR shall function as ACO's written decision notice to DCAA. The minutes will be provided to DCAA by the assigned performance advocate. (See paragraph 3.7.6.2. regarding final minutes.)

3.6.3. If DCAA does not agree with the conclusion of a Center or ~~Directorate~~ *Region* level Board, then a DCAA manager shall inform the chairperson who in turn shall elevate the contract action to the HQ Board for review.

3.6.4. If DCAA does not agree with the HQ Board's conclusion, the Executive Director, Contracts, will elevate the contract action to the DCMA Director for review. The DCMA Director shall pursue resolution in accordance with Reference (h).

3.7. RECORD OF BOARDS OF REVIEW. The ACO and Board chairperson will ensure a record is retained for each contracting action reviewed. DCMA-INST 809, "Records Management" (Reference (j)), provides an orderly system for organizing records for filing, reference and eventual disposition.

3.7.1. During a BoR meeting, Board members shall be advised to make notes on separate pieces of paper and not on the documents furnished to the Board. In any event, any papers whereon a Board member makes notations must be scanned and converted into an electronic document and provided to the assigned performance advocate as covered in paragraph 3.7.4 for electronic retention. The paper version of the notes shall be destroyed after the electronic (scanned) version has been saved to reduce duplicative records.

3.7.2. Board records shall include approved minutes (typically prepared by a performance advocate) of BoR with the Board Chairperson's signature documented in the BoR Request form (Section II. B.) after conclusion of the Board.

3.7.3. A copy of the decisional document (e.g., modification, letter, or memorandum that finalizes a contract action that was considered by a Board) shall be provided, by the ACO, to the performance advocate responsible for preparing the minutes of that Board action. ~~(For the Operations Directorate, ACOs shall post a copy of the decision document in the Operations Contracts Division portal (BoR folder) and provide e-mail notification to the Lead Reviewer.)~~ This final ACO decision document shall demonstrate that the ACO's decision is consistent with the information found in all previously submitted deliberation documents presented to the Board. Any deviations shall be brought to the attention of the Board chairperson by the ACO as covered in paragraph 3.5 of this Instruction.

3.7.4. Board records shall be stored (by an assigned performance advocate) with sufficient documentation to understand the contracting action reviewed and the Board recommendation. A BoR record should be assigned a unique identifier (electronic file folders typically include the affected contractor's name and the nature of the contract action brought before the Board). Records will be stored in hardcopy form only if an electronic copy of the record is not available (Reference (j)). If documents relating to a BoR are too large to upload electronically, the uploaded location will cite a specific location where the hard copy documents/disk will be stored. BoR records shall be retained for the period specified in DCMA-INST 809, "Records Management" (Reference (j)).

3.7.5. ACOs and Board assigned performance advocates shall ensure that all documents in the BoR process are properly protected and marked in accordance with DoDM 5200.01-V4 (Reference (k)). Reference (k) provides guidance for the identification and protection of Controlled Unclassified Information (CUI) to include For Official Use Only (FOUO) information (see pages 11 through 18 of Reference (k)).

3.7.6. Board records may contain privileged information that is proprietary, pre-decisional, deliberative in nature or otherwise protected by legal privilege. This information should be withheld from the public if disclosure can be expected to cause foreseeable harm to an interest protected under the Freedom of Information Act (FOIA) (Reference (l)) or a legal privilege. DCMA legal opinions should not be distributed outside of DCMA, without the consent of DCMA Office of General Counsel. All records created or stored by the Board shall be safeguarded in accordance with any protective markings, and shall be reviewed and approved for release through standard agency FOIA processes before they are provided to the public.

3.7.6.1. Written minutes for a BoR (at any level) should have the following footer related to protective legal privileges: "This document and its supporting materials may be subject to the deliberative process privilege or other privileges and therefore should not be distributed beyond Board members, the ACO team, and DCMA legal counsel." Due care must be exercised in the creation, use, handling, distribution, and storing of all documents intended to be privileged, in order to minimize the risk of any unintended waiver of such privileges. (See paragraph 3.2.1.4.1. for limitations placed on distribution of "privileged" materials.)

3.7.6.2. Performance advocates shall only distribute copies of the final minutes of the BoR to the ACO, other management members who originally approved the BoR Request Form, and a designated DCAA recipient (if DCAA attended the BoR). Distribution of the minutes shall be limited to persons with a need to know. Recipients of the final minutes shall be informed by the performance advocate not to distribute the minutes any further.

3.7.7. All contract actions brought before a Board (HQ and ~~Directorate~~ *Region/Center* level Boards) will be recorded by a performance advocate (at least on a quarterly basis) in the portlet-tool, DCMA Boards of Review Reporting System (BORRS).

3.7.7.1. A unique numeric identifier is automatically created in the BORRS for each boarded action.

3.7.7.2. A link to the BORRS portlet-tool is found in on the Resource Page.

GLOSSARY

DEFINITIONS

Advance Agreements. Advance agreements are described in FAR 31.109 (Reference (m)). As explained in Reference (m), advance agreements are useful in contract situations where “certain costs may be difficult to determine. To avoid possible subsequent disallowance or dispute based on unreasonableness, unallocability or unallowability under the specific cost principles at References (n),(o),(p), and (q), contracting officers and contractors should seek advance agreement on the treatment of special or unusual costs and on statistical sampling methodologies at 31.201-6(c)” (Reference (r)). Examples of cases where advance agreements may be useful are listed at Reference (s).

Business Systems Reviews. See DCMA-INST 131, “Contractor Business Systems” (Reference (t)) for guidance. That instruction observes that business system reviews involve “the appropriate CACO, DACO or ACO, in consultation with the functional specialist or auditor [determining] the acceptability of the Contractor's business systems in accordance with the terms and conditions of the applicable business system clause and approve or disapprove the system.”

Cost Accounting Standards (CAS) Noncompliance. CAS noncompliance matters are covered in FAR 30.605 (Reference (u)). See DCMA-INST 108, “Cost Accounting Standards (CAS) Administration” (Reference (v)), that provides guidance on how an ACO should take action regarding a CAS noncompliance. A CAS noncompliance action reviewable by a BoR can be in the form of either a proposed Contracting Officer's final decision or a Contracting Officer's Determination of CAS noncompliance.

Equitable Adjustments. Per the Defense Procurement and Acquisition Policy (DPAP) “Contract Pricing and Finance Guide,” Volume 4, Chapter 6 (Reference (w)), equitable adjustments come about as follows:

“Equitable adjustments are necessitated by some modification of the contract effort. In general, contract modifications can be defined in one of three ways:

- Addition of work to the contract
- Deletion of work from the contract
- Substitution of one item of work for another (i.e., an addition with a related deletion)

This modification may come from an overt change in Government requirements or it may come from a change in the conditions surrounding the contract (e.g., differing site conditions or late delivery of Government-furnished property).”

Required changes made by a contractor to its disclosed or established cost accounting practice(s), to comply with new or modified Cost Accounting Standards may require equitable adjustments,

but only to those contracts awarded before the effective date of the new or modified standard (see FAR 30.603-1(d) (Reference (x)), 52.230-2 (Reference (y)), 52.230-3 (Reference (z)), or 52.230-5 (Reference (aa))). An equitable adjustment may be made under the Changes clause to the contract, when the Cognizant Federal Agency Official (CFAO) makes a determination that a contractor's change to a cost accounting practice is desirable and not detrimental to the Government's interest and the parties agree to the change (see FAR 52.230-2(a)(4)(iii) (Reference (ab)), 52.230-3(a)(3)(ii) (Reference (ac)), and 52.230-5(a)(4)(iii) (Reference (ad))).

An equitable adjustment may be for either an increase or decrease in contract costs.

External Restructuring Determinations. “External restructuring activities” are defined in DFARS 231.205-70 (Reference (ae)) to mean “restructuring activities occurring after a business combination that affect the operations of companies not previously under common ownership or control. They do not include restructuring activities occurring after a business combination that affect the operations of only one of the companies not previously under common ownership or control, or, when there has been no business combination, restructuring activities undertaken within one company. External restructuring activities are a direct outgrowth of a business combination. They normally will be initiated within 3 years of the business combination.” See DFARS 231.205-70 (Reference (ae)), “External restructuring costs,” where it explains that, “As soon as it is known that the contractor will incur restructuring costs for external restructuring activities, the cognizant ACO shall follow the procedures at PGI 231.205-70(d)” (Reference (af)).

Notice of Intent to Disallow Costs with a DCAA Form 1. See DCMA-INST 128, “Disallowance of Costs” (Reference (ag)), for details. DCAA has primary responsibility for approving interim vouchers for provisional payment (this includes approving the fee portion of vouchers in accordance with the contract schedule and ACO instructions) and sending them to Defense Finance and Accounting Service (DFAS) or other payment office. As part of that responsibility, DCAA is responsible for issuing DCAA Form 1, Notice of Contract Costs Suspended and/or Disapproved when allowability of the costs billed in the interim vouchers is questionable pursuant to Reference (ah).

Performance Based Payments Negotiations. See DCM-INST 116, “Performance-Based Payments” (Reference (ai)) for details. FAR (Reference (aj)) defines “Performance-based acquisition (PBA)” as “an acquisition structured around the results to be achieved as opposed to the manner by which the work is to be performed.” Performance based payments are covered under FAR subpart 32.10 (Reference (ak)). As noted in FAR 32.1003 (a) (Reference (al)), performance-based payments may be used if the “contracting officer and offeror agree on the performance-based payment terms.” Thus, contract payment method must be negotiated.

Suspension of Financing Payments (progress or performance-based payments). Suspension or reduction of progress payments is covered under FAR 32.503-6 (Reference (am)). Suspension or reduction of performance-based payments is covered under FAR 32.1008 (Reference (an)). The procedures found at Reference (am) apply to both cases.

Termination for Convenience. FAR 2.101 (Reference (aj)) defines “Termination for convenience” as “the exercise of the Government’s right to completely or partially terminate performance of work under a contract when it is in the Government’s interest.” Also see DCMA-INST 101, “Termination for Convenience” (Reference (ao)) and “Termination for Convenience Guidebook” (Reference (ap)).

GLOSSARY**ACRONYMS**

| | |
|----------------|---|
| ACO | Administrative Contracting Officer |
| ADR | Alternative Dispute Resolution |
| BoR | Board of Review |
| BORRS | Boards of Review Reporting System |
| CACO | Corporate Administrative Contracting Officer |
| CAS | Cost Accounting Standards |
| CDRC | Contract Disputes Resolution Center |
| CMO | Contract Management Office |
| CUI | Controlled Unclassified Information |
| DACO | Divisional Administrative Contracting Officer |
| DCAA | Defense Contract Audit Agency |
| DCMA-INST | DCMA Instruction |
| DFARS | Defense Federal Acquisition Regulation Supplement |
| DFAS | Defense Finance and Accounting Service |
| DoD IG | Department of Defense Inspector General |
| DPAP | Defense Procurement and Acquisition Policy |
| FAR | Federal Acquisition Regulation |
| FOIA | Freedom of Information Act |
| FPRA | Forward Pricing Rate Agreement |
| FPRR | Forward Pricing Rate Recommendation |
| GAO | Government Accountability Office |
| HQ | Headquarters |
| PGI | Procedures, Guidance and Information |
| PNOM | Pre-negotiation Objective Memorandum |
| PNM | Price Negotiation Memorandum |